

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:07CR105

UNITED STATES OF AMERICA

Vs.

CHARLES A. JOYNER

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ORDER

THIS MATTER is before the Court on Defendant's motion to stay judgment and for release from custody pending appeal. For the reasons stated herein, the motion is denied.

Defendant was charged with disorderly conduct in violation of 36 C.F.R. § 261.4(c) on October 4, 2007, based upon conduct alleged to have occurred on August 4, 2007, in the Sliding Rock area of the Pisgah National Forest. **Violation Notice as to Charles Joyner ("Violation Notice")**, issued **August 4, 2007**. On November 20, 2007, Defendant appeared before the Magistrate Judge in connection with the violation notice. **Judgment in a Criminal Case, filed November 20, 2007**. After waiving his right to counsel, Defendant pled guilty as charged. *Id.* The

Magistrate Judge sentenced Defendant to six months imprisonment, a \$5,000 fine, a \$10 assessment and a \$25 processing fee. *Id.* Defendant was immediately placed into custody to begin serving his sentence.

Defendant, now represented by counsel, filed a timely notice of appeal.

Notice of Appeal, filed November 30, 2007. This Court has ordered the parties to file their respective briefs. **Order, filed December 6, 2007.** In addition to the Defendant's brief, he now files a motion to stay the Magistrate Judge's judgment and for release from custody pending his appeal. **Motion to Stay Judgment and Release Defendant Pending Appeal, filed January 4, 2008.** The Government opposes the Defendant's motion. **Government's Response in Opposition to Defendant's Motion to Stay Judgment and Release Pending Appeal ("Government's Response"), filed January 16, 2008.** The Court does not reach the merits of Defendant's appeal at this time pending receipt of the Government's brief.

The release of a defendant pending appeal is governed by the provisions of 18 U.S.C. §§ 3141 and 3143. The Court shall order a defendant be detained following conviction while an appeal is pending unless the Court finds:

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—

- (i) reversal,
- (ii) an order for a new trial,
- (iii) a sentence that does not include a term of imprisonment, or
- (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

***Id.* § 3143(b).** By its terms, the statute requires that Defendant must satisfy both subsections (A) and (B) in order for this Court to exercise discretion to authorize release.

The Court has carefully considered Defendant's motion and the Government's response in deciding this matter. The Court has also considered the audio recording made during Defendant's November 20, 2007, court hearing before the Magistrate Judge. The Court finds that the Magistrate Judge carefully and meticulously explained to the Defendant his various rights, including the right to plead not guilty, as well as the potential punishment and/or fine that could be imposed by the Court. It was also clear from Defendant's responses in open court that he fully understood what was being said by the Magistrate Judge. Defendant does not set

forth any argument in his motion that would permit this Court to exercise the discretion to order release pending an outcome on appeal. Defendant does contend that he has been a lifelong resident of Western North Carolina, has no criminal history, and has strong ties to the community. However, Defendant's motion does not address the necessary statutory considerations that the appeal is not taken for the purpose of delay or the appeal raises a substantial question of law that could result in reversal, an order for a new trial, or a reduction in sentence. **18 U.S.C. § 3143 (b)**. A substantial question means a "close question or one that very well could be decided the other way." *United States v. Hamrick*, 720 F. Supp. 66, 68 (W.D.N.C. 1989) (quoting *United States v. Powell*, 761 F.2d 127, 1232 (8th Cir. 1985)). Upon review of Defendant's motion, the Court does not find that there is a substantial question that could result in reversal, an order for a new trial, or a reduction in sentence.

The Court will not address the merits of Defendant's appeal until the Government has filed its responsive brief.

IT IS, THEREFORE, ORDERED that the Defendant's motion for stay of judgment and release pending appeal is hereby **DENIED**.

Defendant is advised that he may renew this application for stay of judgment and release pending appeal before the Fourth Circuit Court of Appeals. **Fed. R. App. P. 8.**

Signed: February 6, 2008

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

